

PATENT  
28-7034802001  
BSC 03-253

REMARKS

With entry of this amendment, claims 1-46 and 57-61 are pending in this application. Of these, claims 1-7 and 9-46 stand rejected, claim 8 has been found to contain allowable subject matter, but stands objected to as depending from a rejected base claim, and claims 57-61 have been newly added. Based on the foregoing amendments and following remarks, reconsideration and allowance of this application is respectfully requested.

Claim Election

Applicant hereby affirms the provisional election of Species I.

Information Disclosure Statement

The reference to the U.S. patent application has been cancelled from the application, and provides only background information that does not bear on the patentability of the claims. As such, Applicant believes that citation of the patent application is a separate information disclosure statement unnecessary.

Drawing Objections

The drawings stand objected to failing to comply with 37 C.F.R. §1.84(p)(5) because the reference number "226" is not shown in the drawings. Accordingly, any reference to the number "226" has been cancelled from the specification. As such, Applicant respectfully requests withdrawal of the objections of the drawings.

Specification Objections

The specification stands objected to for failing to comply with 37 C.F.R. §1.57 (b)(2) as incorporating subject matter that has not been clearly identified. Accordingly, reference to Bingham Docket No. 2024728-7034802001 has been cancelled from the specification. The specification

PATENT  
28-7034802001  
BSC 03-253

stands objected to as containing various typographical errors. Accordingly, these typographical errors have been corrected.

As such, Applicant respectfully requests withdrawal of the objections of the specification.

#### Claim Objections

Claims 5 and 17 stand objected to under 37 C.F.R. §1.75 as being a substantial duplicate of claims 4 and 13. Accordingly, claims 5 and 17 have been amended to substantially differ from claims 4 and 13. As such, Applicant respectfully requests withdrawal of the claim objections.

#### Claim Rejections-35 U.S.C. §112

Claims 1, 11, 19, 26, 35, and 41 stand rejected under 35 U.S.C. §112 as being indefinite because “no line of distinction has been made concerning the difference between porous or microporous structure.” Applicant respectfully traverses this rejection, since the specification, at page 10, lines 5-8, refers to the term porous as being generic to the terms “microporous” and “macroporous,” and further defines the term “microporous” as being in the 0.05-20 micro range.

Claims 31, 37, and 43 stand rejected under 35 U.S.C. §112 as being indefinite for failing to provide guidance for the term “surgical probe.” Accordingly, claims 31, 37, and 43 have been amended to require the ablation probes to be rigid.

As such, Applicant respectfully requests the §112 rejections of the claims.

#### Claim Rejections-35 U.S.C. §102

Claims 11, 13-20, 22-25, and 35-46 stand rejected under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 6,017,338 issued to Bruckner, et al. (“Bruckner”). Applicant respectfully traverses this rejection, since Bruckner does not disclose each and every element required by these claims, as amended.

PATENT  
28-7034802001  
BSC 03-253

In particular, independent claims 11 and 19 have been amended to require the porous structure or the microporous structure to extend along a substantial entirety of the probe shaft. Similarly, independent claims 35 and 41 have been amended to require substantially the entire length of the ablation probe to be composed of a microporous structure or a porous structure. In contrast, the porous structure disclosed in Bruckner is limited to the distal tip 26.

Thus, Applicant submits that independent claims 11, 19, 35, and 41, as well as the claims depending therefrom (13-18, 20, 22-25, 36-40, and 42-46), are not anticipated by Bruckner, and as such, respectfully request withdrawal of the §102 rejections of these claims.

Claim Rejections-35 U.S.C. §103

Bruckner

Claims 1, 2, 4-7, 9, 10, and 26-34 stand rejected under 35 U.S.C. §103, as being obvious over Bruckner. Applicant respectfully traverses this rejection, since Bruckner does not disclose, teach, or suggest the combination of elements required by these claims, as amended.

In particular, independent claim 1 has been amended to require the porous structure to extend along a substantial entirety of the probe shaft, and independent claim 26 has been amended to require substantially the entire length of the ablation probe to be composed of a porous structure. In contrast, there is no disclosure, teaching, suggestion in Bruckner that the porous structure extend along a substantial entirety of the probe shaft or that substantially the entire length of the ablation probe be composed of a porous structure.

Thus, Applicant submits that independent claims 1 and 26, as well as the claims depending therefrom (claims 2, 4-7, 9, 10, and 27-34), are not obvious over Bruckner, and as such, respectfully request withdrawal of the §103 rejections of these claims.

PATENT  
28-7034802001  
BSC 03-253

Bruckner and Kresch

Claims 3, 12, and 21 stand rejected under 35 U.S.C. §103, as being obvious over Bruckner in view of U.S. Patent No. 6,017,338 issued to Kresch, et al. ("Kresch"). Applicant respectfully traverses this rejection, since neither Bruckner nor Kresch, alone or in combination, discloses, teaches, or suggests the combination of elements required by these claims, as amended.

In particular, as discussed above, independent claim 1, 11, and 19 from which claims 3, 12, and 21 respectively depend require the porous structure or the microporous structure to extend along a substantial entirety of the probe shaft, which element is not disclosed in Bruckner. Kresch does not supplement this failed teaching.

Thus, Applicant submits that claims 3, 12, and 21 are not obvious over the combination of Bruckner, and as such, respectfully request withdrawal of the §103 rejections of these claims.

Allowable Subject Matter

Claim 8 stands objected to as depending from a rejected base claim, but would be allowable if rewritten in independent form. While Applicant graciously acknowledges the Examiner's indication that claim 8 contains allowable subject matter, this claim has not been rewritten in independent form, since it is believed that independent claim 1 from which it depends is allowable, as explained above. As such, Applicant respectfully requests withdrawal of the objections of claim 8.

New Claims

Applicant submits that newly added claims 57-61 find support in the specification, as originally filed, and are patentable over the prior art for at least the same reasons as independent claims 11, 19, 26, 35, and 41 from which they respectively depend are.

PATENT  
28-7034802001  
BSC 03-253

Conclusion

Based on the foregoing, it is believed that all claims are now allowable and a Notice of Allowance is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at (949) 261-3383.

Respectfully submitted,

Dated: March 9, 2006



Michael J. Bolan  
Reg. No. 42,339

Customer No. 23410  
VISTA IP LAW GROUP  
2040 Main Street, 9<sup>th</sup> Floor  
Irvine, CA 92614